

## EASTERN DIVISION

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## MOTION TO DISMISS PLAINTIFF'S COMPLAINT

support of its Motion, Defendant Humana states as follows:

with Slavin & Slavin was terminated on July 19, 2007.<sup>1</sup> Plaintiff expressly alleges in her

<sup>1</sup> Slavin & Slavin, Mark F. Slavin, Shari B. Slavin, and Paula M. Wisniowicz are collectively referred to herein as the “Slavin Defendants.”

Complaint that the subject group health insurance policy was governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 *et seq.*

2. Plaintiff essentially claims that various misrepresentations were made by the Slavin Defendants which caused her to believe that she was entitled to state continuation coverage under the ERISA-governed group health insurance she had with Humana through her employment with Slavin & Slavin. Specifically, Plaintiff asserts that due to the Slavin Defendants' representations that she was eligible for continuation coverage, she did not apply for alternate health insurance and is liable for certain medical expenses incurred after her coverage with Humana terminated on July 19, 2007.

3. Based on these claims, Plaintiff asserts three counts against the Slavin Defendants: Count I, characterized "Breach of ERISA," Count II for Negligent Misrepresentation, and Count III for Promissory Estoppel.

4. As to Humana, Plaintiff purports to assert four claims against it in her Complaint: Count I for "Breach of ERISA," Count IV, entitled "Breach of Contract to Procure Insurance by Humana," Count V for Negligent Misrepresentation, and Count VI for Promissory Estoppel.

5. Plaintiff's claims against Humana must be dismissed with prejudice for several reasons. Counts IV, V, and VI of Plaintiff's Complaint must be dismissed with prejudice because they assert state law causes of action that are indisputably preempted by ERISA.

6. Count I of Plaintiff's Complaint also must be dismissed because Plaintiff does not assert any wrongdoing by Humana in support of her "Breach of ERISA" theory. Rather, all of the specific allegations of wrongdoing in support of that Count are directed to the Slavin Defendants.

7. Finally, even if Plaintiff's state law claims were not preempted by ERISA, they would require dismissal because they are not sufficiently pleaded as a matter of law.

8. For each of these reasons, Plaintiff's Complaint must be dismissed with prejudice as stated against Humana.

9. Humana's Memorandum of Law in Support of Its Motion to Dismiss Plaintiff's Complaint is submitted contemporaneously herewith and incorporated by reference herein.

**WHEREFORE**, for the reasons set forth above, as well as those contained in its Memorandum of Law in Support of its Motion to Dismiss Plaintiff's Complaint, Defendant HUMANA INSURANCE COMPANY, incorrectly sued as HUMANA HEALTH PLAN OF OHIO, LTD., respectfully requests that this Honorable Court dismiss Plaintiff's Complaint for Breach of ERISA and Other Relief with prejudice as stated against Humana, with Humana's costs awarded.

Respectfully submitted,

**HUMANA INSURANCE COMPANY**

By: /s/Julie F. Wall  
One of its Attorneys

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**Certificate of Service**

I hereby certify that on **April 11, 2008**, a copy of the foregoing **Defendant Humana Insurance Company's Motion to Dismiss Plaintiff's Complaint** was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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/s/ Julie F. Wall

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